

JUSTIN WAYNE HEATH,

Plaintiff,

VS.

C.R. BARD, INCORPORATED, et al.,

Defendants.

Case No. 3:19-cv-00803

Judge Trauger

**PLAINTIFF'S UNOPPOSED MOTION FOR LEAVE TO FILE A MOTION FOR
PARTIAL SUMMARY JUDGMENT**

COMES NOW Plaintiff Justin Wayne Heath and pursuant to Federal Rule of Civil Procedure 16 and the Case Management Order (ECF No. 29, p. 6) hereby moves the Court for leave to file a motion for partial summary judgment on the following affirmative defenses pled by Defendants C.R. Bard, Inc., and Bard Peripheral Vascular, Inc. in the Answer to Master Complaint (MDL ECF No. 366):

- (1) Sole proximate cause (§2);
- (2) Assumption of the risk (§21);
- (3) Failure to mitigate (§4);
- (4) Contributory negligence and/or comparative fault of Plaintiff (§§5, 25, 26);
- (5) Comparative fault of non-parties (§§6, 26, 27);
- (6) Superseding and/or intervening cause (§§9, 19);
- (7) Abuse, misuse, abnormal use/handling, or unintended use (§12);
- (8) Sophisticated user (§18);
- (9) Waiver, estoppel, release and/or laches (§§21);
- (10) Preemption (§7);

- (11) No injury/damage (§23);
- (12) Preexisting conditions (§29);
- (13) Exhaustion of remedies (§30);
- (14) Damages in excess of state law caps (§49); and
- (15) The defense that punitive damages violate the Fourth, Fifth, Sixth, Eighth and Fourteenth amendments to the US Constitution (§43) – without regard to the applicability of punitive damages to the particular facts alleged herein.

Plaintiff's motion will be brought pursuant to Fed. R. Civ. Proc. 56 on the basis that there is no genuine dispute as to any material fact and Plaintiff is entitled to judgment as a matter of law. Such a motion is also made on the basis that it will contribute to judicial economy by limiting the scope of issues before trial. This motion will promote judicial economy in three ways: first, by eliminating defenses that have been pled purely prophylactically; second, by ruling on the legal significance, if any, of certain preexisting conditions suffered by Plaintiff; third, by resolving questions of law still in dispute prior to trial. Accordingly, consideration of this motion will result in efficiency both in the pretrial stage and at trial.

Plaintiff's motion for the procedural relief of leave to file is unopposed, with all rights reserved by Defendants regarding substantive consideration of the matters set forth herein.

WHEREFORE, Plaintiff prays for entry of an Order Granting Leave to File a Motion for Partial Summary Judgment in his favor as to each above-enumerated affirmative defense.

Respectfully submitted, this 27th day of May 2021.

Dated: May 27, 2021

Respectfully submitted,

/s/ Laura J. Baughman

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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of May 2021, I served a copy of the above and foregoing document upon counsel of record via ECF.

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